Donald A. Pusey, Inc. *and* Local Union 654, International Brotherhood of Electrical Workers, AFL–CIO. Cases 4–CA–22774, 4–CA–22967, 4–CA–23011, 4–CA—23030, and 4–CA–23112

November 27, 1998

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The issue presented here[1] is whether the judge correctly found that the Respondent violated Section 8(a)(3) and (1) of the Act when it failed to hire applicant Thomas Linder, but that it did not unlawfully change its hiring procedure.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order as modified.[4]

Our dissenting colleague finds that the Respondent's failure to hire applicant Thomas Linder as a nonjourneyman electrician was lawful because it was based on the Respondent's legitimate practice of refraining from hiring applicants who would be taking a substantial pay cut. Contrary to our dissenting colleague, we find, under the circumstances presented here, that the Respondent's claim that it did not hire Linder because of this policy is pretextual.

The Respondent maintains that its practice of not hiring applicants with high wage histories was based on its belief that such applicants are more likely to leave for higher paying jobs. However, Linder informed the Respondent at his interview that work was slow in the Union and assured the Respondent that he would not leave the Respondent's employ for at least a year. Therefore, the Respondent had no basis for believing that Linder would leave for a higher paying job. Under these circumstances, we find that the Respondent's claimed reliance on the wage history criteria for rejecting Linder is evidence of pretext. The Respondent admits that it was aware of Linder's union affiliation at the time it refused to hire him. Because we find that the Respondent's reason for refusing to hire Linder is pretextual, it is reasonable to infer that the true motivation was an unlawful one, i.e., Linder's union affiliation and sympathies. Accordingly, we agree with the judge that the refusal to hire was based on Linder's union affiliation and accordingly violated Section 8(a)(3) and (1).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Donald A. Pusey, Inc., Media, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth on the Order as modified.

1. Insert the following as paragraph 2(b) and reletter the subsequent paragraphs.

"(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful refusal to hire Thomas Linder and within 3 days thereafter notify the discriminatee in writing that this has been done and that the refusal to hire will not be used against him in any way."

2. Substitute the attached notice for that of the administrative law judge.

MEMBER HURTGEN, dissenting in part.

I do not agree with my colleagues that the Respondent failed to hire job applicant Linder because of his union affiliation.

Linder and fellow union adherent Frank Conover applied for work with the Respondent on May 4, 1994. Thereafter, the Respondent's owner, Donald Pusey, who was aware of the applicants' union affiliation, interviewed the two for employment. According to Pusey, there was a particular job coming up that he thought his company might obtain. He interviewed Linder, with whom he was impressed, and who was an experienced journeyman electrician.[1] According to Pusey, his company did not get that job, so he did not hire Linder.

There is no evidence to rebut Respondent's explanation that it did not have a journeyman job in May. And, indeed, no journeyman was hired until September. However, there were nonjourneymen electricians hired beginning in May. My colleagues conclude that Respondent discriminatorily refused to hire Linder for one of these jobs. I disagree.

[1] The judge credited Pusey's testimony that he was not impressed with Conover and was not interested in hiring him.

[1] On September 30, 1997, Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief and cross-exceptions and a supporting brief. The Respondent filed a response and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In his decision, the judge incorrectly referred to dates for reporting to work as the hiring dates for four employees. The correct hiring dates are: May 12, 1994, for James Barber; June 1 for David Ray Gillen; June 20 for Robert Adamek; and August 13 for David Nelson.

[3] No exceptions were filed to the judge's dismissal of the allegations that the Respondent violated Sec. 8(a)(3) by failing to hire applicants Frank Conover, Leigh Mitchell, and Edward T. Connor III, or to the judge's finding that the Respondent violated Sec. 8(a)(1) by threatening employees with layoffs if they selected a union.

[4] We shall modify the judge's recommended Order and notice to include the requirement that the Respondent delete from its personnel files any reference to the failure to hire Linder and that the Respondent notify him of this action.

Pusey testified that he did not hire people who would be taking "dramatic" pay cuts from their previous jobs. The judge found that almost all of Respondent's employees as of June 17, 1997, received the same pay or more than they had received in their previous jobs. He further found that this fact "generally supports" Pusey's position.[2] More particularly, Linder made $22–24 per hour at his prior job. Respondent was offering $11 per hour, a "dramatic cut." By contrast, there were only about 3 out of 64 Respondent employees in Linder's category (making more than $10 per hour) who took a cut to work for Respondent, and that cut was only about 20 percent.

Since the judge found that Respondent's practice was to refrain from hiring employees who would be taking a substantial pay cut, and since that practice is clearly lawful,[3] one would think that the judge would find no violation. However, the judge found the violation. He appears to have reasoned that Linder's previously high wages meant that he had worked on union jobs. Therefore, according to the judge, Pusey acted on the basis of union activity. This is a classic nonsequitur. The reason for not hiring Linder was his history of earning high wages. The fact that this history was union-based does not establish that union activity was the motive for not hiring him.

My colleagues assert that Respondent's hiring policy (of not hiring high-wage earners) was based on a concern that such persons would leave Respondent after a short time. My colleagues then say that Linder offered to stay with Respondent for at least 1 year. Thus, they argue, Respondent's policy was a pretext as applied to Linder.

The argument has three flaws. First, Linder expressly refused to commit to staying with Respondent for more than 1 year. Second, there is no showing that 1 year would have been adequate for Respondent's legitimate business purpose. Third, and most importantly, the Linder statement was made in connection with his application for the job of journeyman-electrician, a job paying $14–16 per hour. By contrast, the job that was allegedly denied to him was that of nonjourneyman electrician, a job paying only $11 per hour. Linder gave no assurances with respect to how long he would stay on that job.

I recognize that there was a violation of Section 8(a)(1) in August 1994. (Pusey's informing employees of what he told the Board about having to lay off employees if they went union was found to be a threat of layoff.) This, however, was 3 months after the Linder interview. Further, a threat to lay off employees if they went union does not support the theory that Respondent unlawfully refused to hire Linder. Unionization never occurred and there was no layoff. In addition, any implication of anti-union animus is undermined by Pusey's conduct in July. At that time, when employees told Pusey that they wanted to bring in a union to represent them, he expressed no opposition, and simply said that they should organize on their own time.

[2] There is no exception to this finding. The General Counsel's answering brief speculates about the evidence supporting this finding, but does not except.

[3] *Wireways, Inc.*, 309 NLRB 245, 252–253 (1992); *Bay Control Services*, 315 NLRB 30 fn. 2 (1994).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to hire applicants for employment because they are members of a union.

WE WILL NOT threaten to lay off employees because they select a union as their collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days of the date of the Board's Order, offer Thomas Linder a position for which he is qualified and WE WILL make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him.

WE WILL remove from our files any and all references to the refusal to hire Thomas Linder, and we will, within 3 days thereafter, notify him in writing that this has been done and that the refusal to hire will not be used against him in any way.

DONALD A. PUSEY, INC.

Peter C. Verrochi, Esq., for the General Counsel.
Eric J. Becker, Esq., of Costa Mesa, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge. On May 20, July 29, August 15, 19, and September 14, 1994, the charges in Cases 4–CA–22774, 4–CA–22967, 4–CA–23011, 4–CA–23030, and 4–CA–23112, respectively, were filed by Local 654, IBEW (the Union) against Donald A. Pusey, Inc. (the Respondent).

On August 2, 1995, the National Labor Relations Board, by the Regional Director for Region 4, issued a corrected consolidated complaint (complaint), which alleges that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act), when it allegedly failed and refused to hire four applicants for employment because of their union affiliation, when it changed its procedures regarding hiring in order to discriminate against union applicants for employment, and when it threatened its employees with lay off or that it would close its facility if the employees selected the union as their collective-bargaining representative.

The Respondent answered the complaint and denied that it violated the Act in any way.

A hearing was held before me on June 18 and 19, 1997, in Philadelphia, Pennsylvania.[1]

Upon the entire record in this case, to include posthearing briefs submitted by the General Counsel and Respondent, and upon my observation of the demeanor of the witnesses, I hereby made the following

FINDINGS OF FACT

I. JURISDICTION

At all material times Respondent, a Pennsylvania corporation, with an office and shop in Media, Pennsylvania, has been engaged as an electrical contractor providing services to retail, residential, and commercial customers.

Respondent admits, and I find, that at all material times, it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that at all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Overview

Respondent is an electrical contractor with approximately 40 employees. Respondent's employees are not represented by a union.

On May 11, 1994, Thomas Linder and Frank Conover applied for jobs with Respondent which had been advertised in the local paper. They were not hired.

On June 2, 1994, Leigh Mitchell applied for a job but was not hired.

On July 25, 1994, Edward T. Connor III applied for work with Respondent over the phone and was never offered a position or even contacted by Respondent.

Linder, Conover, Mitchell, and Connor were all members of the Union when they attempted to secure employment with Respondent.

Between the time Linder, Conover, and Mitchell applied for work in the May and June 1994 timeframe it is alleged that Respondent, in order to avoid hiring union applicants for employment, changed its hiring procedures by requiring applicants for employment to apply and list their qualifications over the phone before they could come in for an interview.

In late July two employees of Respondent approached the president and owner of Respondent, Donald A. Pusey, and informed him that they were seeking to bring in a union to represent the employees. Pusey said fine but that they should engage in organizing activity on their own time only. On August 8, 1994, Pusey held a meeting, attendance at which was mandatory, and it is alleged that during the meeting he made threats in violation of Section 8(a)(1) of the Act.

B. *Thomas Linder and Frank Conover Apply for Work on May 11, 1994*

On May 9, 1994, Thomas Linder and Frank Conover applied for work with Respondent. They were answering a want ad and filled out applications at Respondent's office. Thereafter Linder was contacted and told to come in for an interview and to bring Conover with him.

Donald Pusey interviewed both men. The interview lasted about 30 minutes. Linder and Pusey did most of the talking. Pusey admits that he knew that both Linder and Conover were union affiliated at the time he interviewed them. Pusey says he interviewed them with respect to a job he thought his Company might get but did not. If Respondent had gotten the job Pusey would have needed, he testified, an experienced electrician to run the job and Pusey claims he interviewed Linder and Conover with that position in mind. Pusey's main reason for not hiring either Linder or Conover is that Respondent did not get the job it was seeking and, therefore, did not need an experienced electrician to run the job. In other words there was no position for him to hire either Linder or Conover for and, accordingly, no violation of the Act.

But Pusey went on to say that he was quite impressed with Linder who did almost all the talking for himself and Conover. Pusey added, however, that since these men would not give him a commitment that they would not leave him for another higher paying job this was an additional reason not to hire them even if there had been an opening.

While I generally found Pusey to be a credible witness I was more impressed with Linder who told Pusey that Linder could no more give a commitment to Pusey about remaining with Respondent than Pusey could commit to them but that work was slow in the Union and he could say with certainty that he would not leave Respondent's employ for at least a year. Conover corroborates Linder on this point.

Linder was in his fifties and had spend his adult life as an electrician. Accordingly he was very qualified and Pusey conceded as much.

The position Pusey considered Linder and Conover for was that of journeyman electrician which would pay $14–$16 per hour. Since the job fell through Pusey said there was no job to offer.

Pusey did not hire a journeyman electrician until September 1, 1994, when he hired a former employee of his named Robert Streater. However, on four occasions, May 12, June 6 and June 22, and August 15, 1994, Pusey hired what he called electricians at $11.50 (Barber), $10 (Gillen), $10 (Adanek), and $8.50 (Nelson) per hour, respectively. Linder and Conover, if qualified for the journeyman electrician "run the job" positions, were, obviously, qualified for the lesser electrician jobs. Respondent classified its employees as journeymen, electricians, or helpers whereas unions generally classify electricians as either journeymen or apprentices.

[1] The General Counsel's unopposed motion to correct transcript is granted and the record should include the stipulation and revised R. Exh. 8 which is attached as an exhibit to the briefs of both the General Counsel and Respondent.

I credit Pusey that he simply wasn't interested in Conover based on his impression of Conover during the May 11, 1994 interview. However, Pusey concedes he was impressed with Linder.

Pusey claims he didn't offer Linder an electrician's job because Linder had worked in trade in the past and made more as a union electrician than Pusey could offer. However, Pusey knew that work in the Union was slow and that union electricians were looking for work with nonunion employers.

Pusey impressed me as one of those very hard working men who would take any kind of job if necessary to support themselves and their family. Pusey, while he never testified to it specifically, impressed me as the kind of man who thinks all work has a dignity to it. Yet he wouldn't offer a job to Linder because Linder had made more money on prior jobs in the trade in the past but only because he was a union electrician. And Pusey knew there was not a lot of union jobs available for Linder to get. In other words Linder was not offered an electricians job at $8.50 to $11 per hour because he was a union electrician and had made more than that in the past. This is discrimination based on union affiliation is a violation of Section 8(a)(1) and (3) of the Act.

Accordingly, Respondent's failure to offer a job to Linder was a violation of the Act. See, e.g., *KRI Constructors*, 290 NLRB 802 (1988). The failure to offer a job to Conover, I conclude, was not a violation because Pusey simply did not like Conover and it wasn't because of Conover's union affiliation but because of this feeling that Conover was not offered a position.

If the facts were such that Pusey believed (which he did not) that Linder would leave him for sure and shortly after he was hired the failure to offer a job to Linder would not be a violation of the Act.

Respondent's Revised Exhibit 8 reflects that with respect to almost all of Respondent's employees as of June 17, 1997, that the job they had before going to work for Respondent paid the same or less than what they received from Respondent. While this generally supports Pusey's claim that he will not hire employees who have to take a dramatic cut in pay to work for him it does not justify the failure to hire Linder who was well qualified, out of work, with little or no prospect of securing a union job, and the only reason he had made more in the past than Respondent would pay him was because he was a member of the Union.

I find that Linder was a bona fide applicant for employment in spite of the testimony of Brad Crowe who worked with Linder at Scott Paper Company and testified that he spoke with Linder about his upcoming case against Respondent (the instant case) and that Linder told him that he wouldn't have worked for Respondent anyway but went to the interview just to make Pusey sweat. Linder credibly denied he said this to Crowe. Linder, I am convinced, sincerely applied for a job with Respondent because he needed the work.

Crowe formerly worked for Respondent and quit hoping to become a union electrician and later returned to work for Respondent. Between his employments with Respondent Crowe worked with Linder at Scott Paper. Crowe struck me as anti-union (things hadn't worked out for him with the Union) and he was obviously beholden to Pusey who had taken him back. I credit Linder's denial that he ever said he wasn't interested in actually working for Respondent.

In addition, Linder never saw until the eve of trial Respondent's Exhibit 1, a letter which was prepared by the Union sometime in 1995 long after Linder applied for work with Respondent which encourages union members to apply for work with nonunion contractors because "This could lead to back pay for unfair labor practices, and also cause the non-union employees severe economic harm, if for the only reason for making them hire an attorney."

C. Leigh Mitchell Applies for Workon June 2, 1994

Leigh Mitchell is a woman who was quite young in appearance. At the time she testified before me she was a college student and a young mother and no longer actively engaged as an electrician.

On June 2, 1994, Mitchell applied for a position as an electrician with Respondent. She was interviewed by Donald Pusey. Mitchell was a member of the Union and Pusey knew it when he interviewed her on June 2, 1994.

During the interview Pusey learned that Mitchell was a trained draftsman as well as an electrician.

After Mitchell had assured Pusey that if she got a job with him she would not just leave him if another better paying job came along, Pusey asked her to call him about her salary requirement.

Thereafter Pusey credibly testified that he decided to offer her a job as a draftsman, which paid $15 per hour, because it would free him from the draftsman's duties which he did at night after working all day.

Pusey called and left messages for Mitchell on her answering machine for her to call him and she called Pusey and left messages for him to call her. They missed each other several times.

The record is clear and the fact conceded, however, that Pusey left the last message for Mitchell to call him and she did not return his call. Since I credit Pusey that he was calling to offer Mitchell a job with Respondent as a draftsman I conclude that Respondent did not violate the Act with respect to its treatment of Mitchell. Mitchell concedes she did not return Pusey's last call but only because she thought she would be wasting her time to do so because she thought that Pusey was not going to offer her a job. She did not know he was even considering her for the draftsman's position and she had made it clear in the interview that her only wage demand was that she receive whatever anyone else doing that job received in wages.

D. Edward T. Connor III Applies for Work on July 25, 1994

Edward T. Connor III, a union member, went to Respondent's office to apply for work and was told he had to phone in his application and Respondent would look over his qualifications and their needs and call him in for an interview. Connor left Respondent's office, went home and, after a bit called Respondent's office to apply. A woman answered the phone and he gave his name, etc., and listed several prior employers, all of whom were union contractors, and were employers which Pusey conceded he knew were union employers.

Connor never heard back from Respondent. He never heard a word from Respondent. Connor never called Respondent to check on his application or whether he was going to get an interview or not.

Two women work in Respondent's office. Pusey's wife, Debbie Pusey and Donna Dilodovico, the wife of one of Respondent's foreman. Both women testified that they had no recollection at all of Connor calling in or them filling out a telephone call-in sheet on him. They could not and did not say

that Connor did not apply. They further testified that they would take applications like Connors over the phone and put the call-in sheet in a box which Pusey would pick up and he would later, if he deemed it appropriate, set up an interview or not. Sometimes the women got the call-in sheet sent back from Pusey's office and sometimes not.

It is clear that Pusey's office operation is not the epitome of organization. Dilodovico called Pusey's office "never never land." Papers got to Pusey's office and just disappeared.

Pusey testified and, I believe him, that he never received the call-in information on Connor although he was sure Connor did call in and he failed to consider Connor for an interview or a job because he never knew about him applying in the first place and not because Connor was union affiliated.

In addition, the two Puseys and Diladovico were unable to find the call-in sheet on Connor when answering the General Counsel's subpoena.

Since I credit Pusey I find that Respondent did not violate the Act with respect to his treatment of Connor. Connor was not considered for employment but not because of his union affiliation but because of disorganization in Respondent's office.

E. Change in Hiring Policy

It is alleged that in June 1994 in order to avoid hiring union affiliated applicants for employment Respondent changed its hiring procedure to require applicants to apply over the phone and not in person and to list their qualifications over the phone.

Clearly there was evidence that people applied for employment in person and didn't have to call in first prior to Connor trying to apply in July 1994.

However, Respondent claimed that the policy was always that applicants were to call first and not just show up to apply in person and when they called in they gave their qualifications over the phone and later they may or may not be called in for an interview. Respondent further concedes that the policy was not consistently enforced. The reason for the policy was Pusey did not want the women in the office, who were often alone, to have to deal with applicants coming into the office. And, to support its claim Respondent pointed out that, for the most part, the want ads it ran in the paper listed only Respondent's phone number and not its address.

I found Pusey to be credible in this area and conclude that the Act was not violated because there was no change in hiring procedures for either a lawful or an unlawful reason.

It can be argued that it makes it easier, as in Connors' case, to say you never got the call-in sheet on an applicant rather than to you never got the application if the applicant applied in person but this probably isn't even true. If you can lose a call-in sheet you can lose an application. Credibility resolutions will determine whether the claim that something was lost in the shuffle is accurate or not.

F. Threats by Respondent on August 8, 1994

In late July 1994, two of Respondent's employees, John Brian Kelly and Brian Venuto, approached Pusey and said that they wanted to bring a union in to represent its employees. Pusey said okay but organize on your own time.

On August 8, 1994, Pusey held a meeting with his employees. Attendance was mandatory. Pusey talked about his business and unions.

Pusey recorded the conversation and it was later transcribed.

In the meeting which lasted at least 30 minutes Pusey did most of the talking. The words in parenthesis are from the audience (employees) and the words not in parentheses are those of Donald Pusey:

> The government's suing me. (They're suing you?) Yeah. (Everyone is on welfare) I'd put, my response to the one, I couldn't even see straight, and I wrote across it, okay we'll go union, and I'm not trying to scare you. All right, we'll go union and I won't have any work, and I'll lay everybody off and then you can pay for it. I since had a response from their lawyer.

Pusey concedes the transcript is accurate but what he was telling his employees was what his answer to the National Labor Relations Board complaint was, i.e., he told the Labor Board that he'll go union, have no work, and lay everybody off and the Labor Board can pay for it.

Clearly it is an unlawful threat to threaten to lay off employees if they select a union to represent them and, obviously, to tell the employees that this is what you told an agency of the U.S. Government makes it, in a sense, even a more serious threat. Respondent violated Section 8(a)(1) of the Act with the above quoted comment. See, e.g., *Debber Electric*, 313 NLRB 1094, 1098 (1994).

REMEDY

The remedy in this case should include a cease-and-desist order, the posting of an appropriate notice, and the offering of position and backpay to Thomas Linder.

CONCLUSIONS OF LAW

1. Donald A. Pusey, Inc., Respondent, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. IBEW Local 654, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent on May 11, 1994, violated Section 8(a)(1) and (3) of the Act when it failed and refused to hire Thomas Linder because of his membership in the Union.

4. Respondent violated Section 8(a)(1) of the Act when Owner and President Donald A. Pusey threatened employees with layoffs if they selected a union as their collective-bargaining representative.

5. The unfair labor practices found above are unfair labor practices having an effect on commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, Donald A. Pusey, Inc., Media, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to hire applicants for employment because they are members of a union.

(b) Threatening to lay off employees if they select a union as their collective-bargaining representative.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board, and shall be deemed waived for all purposes.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order offer Thomas Linder a position for which he is qualified and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay to be computed on a quarterly basis as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(b) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Within 14 days after service by the Region post at its facility in Media, Pennsylvania, and all other places where notices customarily are posted, copies of the attached notice marked "Appendix.[3] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 11, 1994.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."